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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,140	09/28/2001	Richard L. McDowell	R.L. McDOWELL 20-76	4925
47396	7590	08/08/2005	EXAMINER	
<b>HITT GAINES, PC</b> <b>AGERE SYSTEMS INC.</b> <b>PO BOX 832570</b> <b>RICHARDSON, TX 75083</b>				VU, THAI
		ART UNIT		PAPER NUMBER
		2687		

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/967,140	MCDOWELL ET AL.
	Examiner Thai N. Vu	Art Unit 2687

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11/18/2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 19-27 is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 05/24/2005.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Amendment***

1. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 6-7, 9-12, 15-16 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Werling et al. (U.S. Patent #: 6,456,856; hereinafter "Werling").

Regarding claim 1, Werling teaches a system for use with a portable cell phone, a proximity regulation system (FIG. 1), comprising:

a location sensing subsystem configured to determine a location of said portable cell phone with respect to a portion of a body of a user (i.e. the proximity detector noted in FIG. 1, block 18; column 3, lines 1-14 – inherently, the detector is capable of distinguishing areas having different heat or humidity signatures, e.g. bare skin areas emits more heat or higher humidity than clothed areas); and

a power governing subsystem, coupled to said location sensing subsystem, configured to determine a proximity transmit power level of said portable cell phone based on said location (FIG. 1, block 17; column 3, lines 15-18).

Regarding claim 2, Werling teaches limitations of the claim in column 3, lines 1-19; column 4, lines 16-36 (i.e. with different areas of the user body provides, detector provides different data value resulting in different transmit power values).

Regarding claim 3, Werling teaches limitations of the claim in column 4, lines 36-60 (i.e.  $P_{MAX}$ ).

Regarding claim 6, Werling further teaches limitations of the claim in FIG.1, block 17 and column 2, lines 54-66 (i.e. Micro controllers which are widely available as integrated circuits).

Regarding claim 7, Werling further teaches limitations of the claim in FIG. 4 and column 4, lines 40-60.

Regarding claim 9, Werling further teaches limitations of the claim in column 3, lines 1-14.

Regarding claim 10, Werling teaches a method of operating a portable cell phone, comprising:

determining a location of said portable cell phone with respect to a portion of a body of a user (i.e. based on temperature and humidity, the proximity can be determined, column 3, lines 1-14 - inherently, the detector is capable of distinguishing areas having different heat or humidity signatures, e.g. bare skin areas emits more heat or higher humidity than clothed areas);

providing a control signal based on said location (i.e. control signal provided by a microcontroller in FIG. 1, column 3 lines 15-18) ; and

determining a proximity transmit power level of said portable cell phone based on said control signal (FIG. 1 block 16, column 3, lines 15-18).

Regarding claim 11, Werling teaches limitations of the claim in column 3, lines 1-14 (i.e. with different areas of the user body provides, detector provides different data value resulting in different transmit power values).

Regarding claim 12, Werling teaches limitations of the claim in column 4, lines 36-60 (i.e.  $P_{MAX}$ ).

Regarding claim 15, Werling further teaches limitations of the claim in FIG.1, block 17 and column 2, lines 54-66 (i.e. Micro controllers which are widely available as integrated circuits).

Regarding claim 16, Werling further teaches limitations of the claim in FIG. 4 and column 4, lines 40-60.

Regarding claim 18, Werling further teaches limitations of the claim in column 3, lines 1-14.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werling (U.S. Patent #: 6,456,856) in view of Pirhonen et al. (US Patent #: 6,195,562; hereinafter "Pirhonen").

Regarding claims 4 and 13, Werling teaches all subject matter as claimed above except for proximity transmit power level being maximum when said portable cell phone is operating in a headset operation mode or data transfer operation mode. However, Pirhonen teaches such limitations in column 2, lines 29-37 for the purpose of achieving high speed data transmission.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of proximity transmit power level being maximum when said portable cell phone is operating in a data transfer operation mode, as taught by Pirhonen, in view of Werling, in order to achieve high speed data transmission.

6. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werling (U.S. Patent #: 6,456,856) in view of Merriam (U.S. Patent #: 6,408,187; hereinafter "Merriam").

Regarding claims 5 and 14, Werling teaches all subject matter as claimed above except for portable cell phone being located on a belt-clip of the user. However, Merriam teaches such limitations in column 3, lines 36-49 for the purpose of indicating whether the device within relatively close proximity to a user.

Therefore, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to incorporate the use of portable cell phone being located on a belt-clip of the user, as taught by Merriam, in view of Werling, in order to determine the behavior of the communications device.

7. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werling et al. (U.S. Patent #: 6,456,856) in view of Merriam (U.S. Patent #: 6,408,187) and Mitzlaff (U.S. Patent #: 4,636,741; hereinafter "Mitzlaff").

Regarding claims 8 and 17, Werling teaches all subject matter as claimed above. Werlington further teaches location sensing subsystem determining said location by employing a sensor selected from the group consisting of:

a designated sensor (column 3, lines 1-14),

a contact sensor (i.e. heat/humidity sensor is used to detect a contact with human skin, column 3, lines 1-14)

It should be noticed that Werlington fails to clearly teach a belt clip sensor.

However, Merriam teaches such limitations in column 3, lines 36-49 for the purpose of indicating whether the device within relatively close proximity to a user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of a belt clip sensor, as taught by Merriam, in view of Werlington, in order to determine the behavior of the mobile unit.

It should be further noticed that Werlington and Merriam, in combination, fails to clearly teach a cradle sensor. However, Mitzlaff teaches such limitations in the abstract for the purpose of detecting the presence of the Mobile unit.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of a cradle sensor, as taught by Mitzlaff, into view of Werlington and Merriam, in order to adjust the transmission power accordingly.

***Allowable Subject Matter***

8. Claims 19-27 are allowed.
9. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach the feature of a portable cell phone, comprising:
  - a power circuit that provides a network adjusted transmit power level as a function of a position to a communications tower; and
  - a proximity regulation system, including:
    - a location sensing subsystem that determines a location of said portable cell phone proximate a user; and
    - a power governing subsystem, coupled to said location sensing subsystem, that *determines a proximity transmit power level of said portable cell phone based on said location and determines a transmit power level for said portable cell phone based on said network adjusted transmit power level and said proximity transmit power level.*

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai N. Vu whose telephone number is 571-272-7928. The examiner can normally be reached on 9:00AM-7:00PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on 571-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SONNY TRINH  
PRIMARY EXAMINER

Thai N. Vu  
Examiner  
Art Unit 2687